



## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[RTID 0648-XD084]

### **Magnuson-Stevens Fishery Conservation and Management Act Provisions; Atlantic Coastal Fisheries Cooperative Management Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice; request for comments.

**SUMMARY:** The Assistant Regional Administrator for Sustainable Fisheries, Greater Atlantic Region, NMFS, has made a preliminary determination that an Exempted Fishing Permit application contains all of the required information and warrants further consideration. The Exempted Fishing Permit would allow commercial fishing vessels to fish outside fishery regulations in support of research conducted by the applicant.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act and the Atlantic Coastal Fisheries Cooperative Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed Exempted Fishing Permits.

**DATES:** Comments must be received on or before [*INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER*].

**ADDRESSES:** You may submit written comments by the following method:

- Email: [nmfs.gar.efp@noaa.gov](mailto:nmfs.gar.efp@noaa.gov). Include in the subject line "NEFSC On-Demand Gear EFP."

**FOR FURTHER INFORMATION CONTACT:** Laura Deighan, Fishery Management Specialist, [Laura.Deighan@noaa.gov](mailto:Laura.Deighan@noaa.gov), (978) 281-9184.

**SUPPLEMENTARY INFORMATION:** The NOAA Northeast Fisheries Science Center submitted a complete application for an Exempted Fishing Permit (EFP) to conduct commercial fishing activities that the regulations would otherwise restrict to expand trials of on-demand fishing gear that uses one or no surface buoys and to test the ability of gear marking systems to consistently locate gear. This EFP would exempt the participating vessels from the gear marking requirements at 50 CFR 697.21(b)(2) to allow the use of trawls of more than three traps with no more than one surface marking and §648.84(b) to allow the use of gillnet gear with no more than one surface marking. Exempted fishing activities would take place between August 21, 2023, and August 20, 2024.

The project is a continuation and expansion of the Center's efforts to trial on-demand fishing systems (also known as ropeless or buoyless) aimed at reducing entanglement risk to protected species, mainly the North Atlantic right whale, in trap/pot and gillnet fisheries. The Center's existing EFP will expire on August 21, 2023, and authorizes gear trials on up to 100 trap/pot vessels. As of March 2023, the Center had collected data from 707 hauls of on-demand gear in Federal waters under its current EFP. Of these, 267 hauls took place in Lobster Management Area (LMA) 3, 164 in LMA 2, and 276 in LMA 1. The Center reported two instances of gear loss or gear conflict. One incident involved a gear conflict with a mobile fishing vessel, the second incident was related to a malfunction of the on-demand gear itself. The Center has increased outreach to encourage use of the Trap Tracker app by non-participant vessels. As of March 2023, approximately 42 fixed-gear and 5 mobile-gear vessels are using Trap Tracker.

This project would expand trials to allow up to 200 trap/pot vessels to replace up to 10 of their existing trawls (up to 2,000 trawls total) with modified trawls, including in Atlantic Large Whale Take Reduction Plan (ALWTRP) Restricted Areas. It would also add the opportunity to trial on-demand gear in gillnet fisheries, with up to 5 of the 200

vessels fishing up to 8 (40 total) modified gillnet strings. Modified gear would replace one or both traditional end lines with acoustic on-demand systems and other alternatives to static buoy lines (including, but not limited to, spooled systems, buoy and stowed rope systems, lift bag systems, and grappling).

The ultimate goal of this project is to enable the continuation of some of the region's most valuable and historically significant fisheries while also meeting the requirements set forth by the ALWTRP and section 118(f) of the Marine Mammal Protection Act, specifically reducing the level of serious injury and mortality of North Atlantic right, humpback, and fin whales in commercial fisheries. To achieve this, the project includes objectives to test the efficacy of fully on-demand trawls and the adequacy of gear marking systems that use data hubs and visualization platforms to share on-demand gear locations. The project is intended to address challenges and data needs associated with on-demand gear, including:

- Increasing availability of and standardizing participant training;
- Reducing operational interruptions (line snarls, gear breakage, acoustic response issues, *etc.*);
- Evaluating multiple prototypes under the range of fishing conditions;
- Evaluating retrieval times with through-hull transducers;
- Evaluating float modifications;
- Evaluating modifications to facilitate faster retrieval in low visibility conditions;
- Evaluating new prototypes;
- Improving stackability on deck;
- Improving gear detection by other fishermen and relevant stakeholders (*e.g.*, wind surveyors);
- Improving access to location data (*e.g.*, overlaying on digital charts);
- Improving the ability to upload data (*e.g.*, outside of cell data range);

- Increasing data to support regulatory analyses (*e.g.*, costs in time and landings; costs/savings associated with gear conflicts); and,
- Increasing performance of on-demand gear through feedback to manufacturers.

To ensure that on-demand fishing and gear marking technologies are adequately tested across the breadth of regional commercial fishing conditions, the Center requests the flexibility to test on-demand gear across the geographic range of the Federal American lobster and Jonah crab fishery (LMAs 1-5 and the Nearshore Outer Cape LMA), including testing fully on-demand gear (no persistent vertical lines) in ALTWRP Restricted Areas. It also requests the opportunity to trial on-demand gillnet gear on federally permitted monkfish, groundfish, spiny dogfish, and skate vessels from Maine to Virginia. To cover a greater area and target areas where data is needed, the Center has requested the flexibility to have greater than 200 participants during the one-year period (with only 200 fishing at one time) and would provide requested modifications to the active participants, general locations, and technologies to be tested one month in advance. Priority would be given to participants who are seasonally excluded from fishing in certain areas and/or participants in offshore fisheries that have limited entanglement mitigation options available. The Center is also specifically targeting increased wintertime data collection.

This permit would only exempt vessels from the specified Federal regulations in Federal waters. It would not exempt the vessels from any requirements imposed by any state, the Endangered Species Act, the Marine Mammal Protection Act, or any other applicable laws. The applicant would be responsible for obtaining all required state authorizations. Other than gear markings, all trap trawls and gillnet strings would be consistent with the regulations of the management area where the vessel is fishing and would be fished in accordance with the participating vessels' standard operations (number and length of trips, soak times, trap limits, *etc.*).

The use of on-demand trap/pot gear in the ALWTRP Restricted Areas is limited to gear without any persistent vertical lines. The Center would allow incremental expansion of on-demand trials in the Restricted Areas, depending on its capacity to provide gear and manage the activity. In recognition of industry's interest in grappling as a low-cost alternative to acoustic on-demand systems, this project would also allow up to 25 vessels to retrieve fewer than 10 buoyless trawls via grappling, including in ALWTRP Restricted Areas. This would enable the Center to collect data on the viability of grappling at a commercial scale. This would be consistent with what is authorized under the existing EFP, although no grappling trials have occurred to-date.

In the first phase of participation, staff from the Center and the gear manufacturers would provide training to ensure the system is working as intended and all participants have sufficient experience with the gear prior to borrowing from the gear cache library. In the second phase, participating vessels would rig an on-demand system to one end of a standard trawl or string and fish it as a hybrid (with one traditional surface marking) for at least 10 hauls per system. In phase three, participants would fish the gear as part of normal fishing operations, including fishing fully on-demand gear and in the ALWTRP Restricted Areas. In some cases, a scientific observer may be on board, and/or GoPro Systems (or equivalent) may record gear retrievals. The Center would provide standardized data collection sheets to all participants, but individually-identifiable data will only be made public with the express permission of the vessel owner.

The Center also plans to include targeted geolocation studies in areas with limited trawling and/or dredging to test new location-marking systems on the seafloor and automated location-marking when gear is set and retrieved. This EFP would support efforts to improve gear-marking and gear-conflict avoidance technologies, including testing the amount of effort to mark sub-surface gear location in the Trap Tracker app (vs. surface location where the gear is deployed) and other sub-surface gear marking

technologies. This EFP would also test the use of the EarthRanger platform that displays gear locations from various gear-marking technologies. The Center would demonstrate and continue to encourage the adoption of these technologies with non-participant vessels.

The Center proposes the following best practices and risk reduction measures:

- All vessels would report all right whale sightings to NMFS via *ne.rw.survey@noaa.gov* or NOAA (866-755-6622) or the U.S. Coast Guard (Channel 16) and record sightings on data sheets;
- All vessels would retrieve on-demand vertical lines as quickly as possible to minimize time in the water column;
- All vessels would adhere to current approach regulations—a 500-yard (457.2-meter or 1,500-foot) buffer zone created by a surfacing right whale—and must depart immediately at a safe and slow speed, in accordance with current regulations. Hauling any lobster gear would immediately cease (by removal) to accommodate the regulation and be reinitiated only after it is reasonable to assume the whale has left the area;
- All vessels would provide mandatory, weekly gear loss reports;
- All vessels would operate within a 10-knot speed limit when transiting Restricted Areas or when whales are observed;
- For fully on-demand gear without traditional surface markings, participants would use the Trap Tracker or an equivalent technology for retrieval and set positioning details, which would be available to Federal, state, and corresponding enforcement personnel, as well as other fishermen;
- For fully on-demand gear without traditional surface markings, on-demand vertical lines would be marked with unique yellow/black/orange marks above the

regional markings, in addition to ALWTRP regulations (per agreement with the NMFS Atlantic Large Whale Take Reduction Team Coordinator);

- When fishing in ALWTRP Restricted Areas, vessels would check real-time right whale sightings information (such as Right Whale Sightings Advisories and Whale Alert before setting any gear and avoid areas of high right whale abundance, and all vessels would be recommended to follow this process when setting gear outside the ALWTRP Restricted Areas;
- In the Restricted Areas, vessels would fly a unique flag for enforcement recognition;
- The Center would provide monthly updates on any gear conflicts to the Sustainable Fisheries Division at the Greater Atlantic Regional Fisheries Office; and,
- Sustainable Fisheries Division staff would be invited to recurring gear coordination calls with time dedicated to EFP discussion.

If approved, the applicant may request minor modifications and extensions to the EFP throughout the year. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and have minimal impacts that do not change the scope or impact of the initially approved EFP request. Any fishing activity conducted outside the scope of the exempted fishing activity would be prohibited.

All comments received are a part of the public record and will generally be posted for public viewing

at <https://www.noaa.gov/organization/information-technology/foia-reading-room> without change. All personal identifying information (*e.g.*, name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will

be publicly accessible. NMFS will accept anonymous comments (enter "anonymous" as the signature if you wish to remain anonymous).

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: June 14, 2023.

**Jennifer M. Wallace,**

*Acting Director, Office of Sustainable Fisheries,*

*National Marine Fisheries Service.*

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